

808 KAR 10:370. Securities offered on the Internet but not sold in Kentucky.

RELATES TO: KRS 292.410(1)(q)

STATUTORY AUTHORITY: KRS 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 292.500(3) authorizes the commissioner to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 292. KRS 292.340 requires registration for a nonexempt security. KRS 292.410(1)(q) authorizes the commissioner to create exemptions from the registration requirements established in KRS 292.340. This administrative regulation establishes requirements for determining if the transmission of information via the Internet concerning a security offering requires registration pursuant to KRS 292.340.

Section 1. An attempt to offer or dispose of, or a solicitation of an offer to purchase, a security, or an interest in a security for value, made via the Internet, including a communication on a proprietary or "common carrier" electronic delivery system, the World Wide Web or the Internet, shall be considered an "offer" of a security under KRS Chapter 292.

Section 2. Registration shall not be required for a security that will be:

- (1) Offered by an issuer on the Internet; and
- (2) Not sold in Kentucky.

Section 3. A security offered by an issuer on the Internet shall be exempt from the registration requirements established in KRS 292.340 through 292.390 if:

- (1) The offer indicates, directly or indirectly, that the security shall not be sold to a person in Kentucky;
- (2) The offer is not otherwise specifically directed to a person in Kentucky by, or on behalf of, the issuer; and
- (3) A sale of the issuer's security shall not be made in Kentucky as a result of the offer until:
 - (a) 1. The offering has been registered and declared effective; and
 2. The final prospectus or Form U-7 has been delivered to the investor prior to the sale; or
 - (b) The sale is exempt from registration.

Section 4. Reliance on the exemption from registration established under this administrative regulation shall not preclude an issuer from relying on another exemption available under KRS Chapter 292.

Section 5. Incorporation by Reference. (1) Form U-7, "Small Corporate Offerings Registration", April 1989, North American Securities Administrators Association, Inc, is incorporated by reference.

(2) It may be inspected, copied, or obtained at the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky, 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) A copy may also be obtained from the National Association of Securities Dealers (NASD), 1735 K Street, N.W., Washington, D.C., 20006, or a regional NASD office. (24 Ky.R. 2270; Am. 25 Ky.R. 98; eff. 6-25-1998; TAm eff. 11-7-2012.)